IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6533 of 1997

Prakash Hari Mahale .. Petitioner

versus

State of Maharashtra & ors. .. Respondents

...

Mr.R.K. Mendadkar for the petitioner.

Mr.C.R. Sonawane, AGP for the respondent nos.1 to 5.

CORAM : S.B. MHASE AND

D.G. KARNIK, JJ

DATED : 24th January 2006.

P.C.:

1. Heard the learned counsel appearing for the parties.

2. In this petition, the petitioner challenges the order dated 4th November 1997 passed by respondent

no.2 - Committee for Scrutiny in Verification of Tribe Claims, Maharashtra State overruling the petitioners claim that he belongs to a Thakur Tribe and invalidating his tribes certificate.

3. The petitioner is employed under the State of Maharashtra and is working under the Directorate of Animal Husbandary. The petitioner was selected to the post of a driver, in open category. However, while writing his category his caste/tribe in the application forms, he stated that he belonged to a Thakur Tribe and produced a tribes certificate to that effect. Since Thakur Tribe is recorded as Schedule Tribe under a Presidential order dated 6th September 1950 as amended by Schedule Caste and Schedule Tribe Orders (Amendment) Act 1976 (for short the Act of 1976"), the respondent no.4 sent the tribe certificate produced by the petitioner for verification by the Tribe Scrutiny Committee i.e. the respondent no.2 herein. The Scrutiny Committee referred the matter to Vigilance Cell. The Vigilance office by his report (copy of which is filed at page 23) reported that petitioner was a Thakur. After considering the evidence adduced by the petitioner and the report of the Vigilance Officer the Scrutiny Committee came to the conclusion that the

petitioner did not belong to Thakur tribe and invalidated tribe certificate produced by the petitioner. That order is impugned in this petition.

4. We have perused the order of the Scrutiny Committee. The Scrutiny Committee invalidated the claim of the petitioner of belonging to the Thakur tribe principally on two grounds. Firstly, the Scrutiny Committee held that though the petitioner had proved that he belonged to the Thakur community, he had not proved any ethic affinity to Ka Thakur or Ma Thakur tribes and therefore, the petitioner could not be regarded as belonging to the Thakur tribe. Secondly, the Scrutiny Committee observed that Thakur was also a caste and many people belonging to Thakur caste, in order to claim benefit of the reservation granted to a Thakur Tribe, claimed that they belonged to Thakur tribe though in fact they only belonged to a Thakur caste. The Scrutiny Committee therefore held that a Thakur person may belong to a Thakur Caste and not to a Thakur tribe and therefore, such a person must prove ethnic link with the Thakur tribes i.e. with Ka Thakur or Ma Thakur tribes.

4. We are unable to agree with the reasoning as

well as with the ultimate decision of the Scrutiny Committee. The report of the Vigilance Officer is unambiguous. The Vigilance Officer has unequivocally reported as follows :

> "After enquiring into the place of employment of the petitioner, his community and relatives and the educational certificates of the petitioner and his family members, it is held that the petitioner belongs to a Thakur (Caste).
>
> (The original report is in Marathi language and the relevant part is translated in English by us)

The Vigilance Officer had clearly come to the conclusion that the petitioner is a Thakur. Nothing was brought on record before the Scrutiny Committee that the conclusion of the Vigilance Officer that the petitioner was to Thakur was erroneous. The Scrutiny Committee only surmised that many people belonging to Thakur Caste, in order to claim benefits of the presidential order falsely claim themselves to belong to a Thakur tribe. There was no material on record to show that the petitioner did not belong to a Thakur tribe and was falsely claiming to belong to Thakur tribe.

5. In our view, the second reasoning given by the

Scrutiny Committee that the claimant must also prove that he has affinity with the Ka Thakur and Ma Thakur, is erroneous. The original entry in the presidential order dated 6th September 1950 was "Thakur". The schedule to the presidential order dated 6th September 1995 was modified by the Parliament by the Act of 1976. The entries in the original schedule of the presidential order were modified by the said Act. Entry no.44 of Part 9 (which relates to State of Maharashtra) of the Second schedule of the Act of 1976 contains an entry regarding Thakur tribe and is reads thus:

> "44 Thakur, Thakar, Ka Thakur Ka Thakar, Ma Thakur, Ma Thakar".

Each of the words used in the said entry must be given full effect to. It is not necessary that the person who claims to belong to a Thakur tribe should prove his ethnic link with other tribes appearing in entry no.44. The person belonging to a Thakur tribe may or may not have any ethnic link with "Ka Thakur" or "Ma Thakur" or even Thakars. But that does not mean that the person would cease to belong to Thakur tribe merely because he does not have ethnic links with Thakars or Ka Thakurs

or Ma Thakurs.

6. It is worthwhile to note that in the present case, the Scrutiny Committee has not recorded a finding that the petitioner does not have ethnic links with Thakur tribe. In our view, it is not necessary for the petitioner to prove ethnic links "Ka Thakur" or "Ma Thakur" tribes for proving his claim that he belongs to a Thakur tribe. It would be enough if he proves ethnic links with the Thakur tribe, which has been done and has been held to be so by the Vigilance Officer.

7. For these reasons, the order passed by the Scrutiny Committee cannot be sustained and is set aside.

8. Petition is allowed. Rule is made absolute in terms of prayer clauses (b) and (c).

(D.G. KARNIK, J) **(S.B. MHASE, J)**